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Full Disclosure Critical for Without Notice Pending Litigation Orders: MBQB

The court sets aside a pending litigation order it granted on a without notice basis in [*Oggi Investments Ltd. v. Huntingdon Real Estate Investment Trust*](#), 2011 MBQB 10, finding that the applicant had failed to make full and fair disclosure of the facts. The case law makes it clear that "a moving party must, at minimum, indicate in a reasonable manner the positions known or likely to be taken by the opposing party." (para.51) In this case, the applicant filed only the accepted offer to purchase and a brief affidavit in support of the motion, giving no details of the position taken by the defendants which had been fully set out in correspondence exchanged between the parties and counsel. The court also dismissed the plaintiff's motion for summary judgment, finding that there were genuine issues for trial concerning compliance with the terms of the purchase agreement and waiver of the "time is of the essence" provision.

Appeals from Orders of the Residential Tenancies Commission Limited: MBCA

Two recent Court of Appeal decisions involve appeals by unrepresented tenants of possession orders granted or upheld by the Residential Tenancies Commission: [*J.C. Property Management v. Benard*](#), 2011 MBCA 1 and [*Edison Rental Agency v. Klippenstein*](#), 2011 MBCA 3. In both cases the court dismisses the appeal, finding no arguable case of substance, nor one warranting the attention of the court.

Administrator Not Responsible for Judgment Against Estate: MBQB

Compounding errors made by counsel and the courts led to the improper issuing of a garnishing order against the administrator and a beneficiary of the estate according to Master Harrison in [Davison v Estate of Raymond Davison](#), 2010 MBQB 274. The decision traces the various court actions initiated by the estranged wife of the deceased, who commenced proceedings for the release of the deceased's remains prior to the appointment of her brother-in-law as administrator of the estate. Subsequent collateral proceedings against the estate (but not the administrator) resulted in an order that the wife was entitled to receive retirement funds and right of survivorship in the marital home. This order was eventually "transformed into a specific judgment" against the administrator and another individual who "had absolutely no legal or responsible connection with the estate other than perhaps her entitlement at law as a beneficiary of her brother's estate." (para. 12) The court struck the garnishing order, finding it to be scandalous, frivolous, vexatious and an abuse of the court process. It also found that the administrator's legal responsibilities did not directly translate into liability for the liquidated sum set forth in the order and that, in the absence of misconduct, an administrator is entitled to compensation for his costs and expenses out of the estate even in cases of unsuccessful litigation.

What's Fair is Just: BCSC

The controversial ruling in [Werbenuk v. Werbenuk Estate](#), 2010 BCSC 1678, the B.C. Supreme Court decision overturning the will of a man who disinherited his four daughters and left everything to his son, has got a lot of people talking judging by the number of responses to these articles discussing the case: [Man's son-only will overturned, assets shared with four daughters](#), the *Globe and Mail* and [Will that cut out daughters overturned](#), CBC news. As noted on [The Court](#), the case may be acceptable on its facts (the judge found the testator to be a racist who terrorized and demeaned his daughters), but it is potentially troublesome as a precedent, allowing as it does for a will to be overturned because of its divergence from societal norms.

Updated Succession Law Tables

The Wills, Estates and Trusts section of the Canadian Bar Association has updated its [Succession Law Tables of Concordance](#). The tables contain basic information about estate and succession laws and links to court and land titles officials across Canada. See, for example, the [cross jurisdiction](#) and [Manitoba](#) tables.

Recent Articles on Property and Estates Topics

These articles may be of interest to property and estates lawyers:

- [Lawyers cashing in on MLS challenge-Real estate practitioners can earn more fees per transaction](#), a January 17, 2011 *Law Times* article discussing the impact of the Competition Bureau's challenge to the MLS system on real estate lawyers. For more detail on the issue of how limiting the role of agents will change the game for lawyers see the article *Assorted Observations about Real Estate Claims* in the December 2010 issue of the *Communique*, written by members of the Law Society of Manitoba's Insurance department;
- [As charitable giving through wills grows, so do legal pitfalls](#), a January 3, 2011 *Law Times* article on how estates lawyers will be affected by the growing trend of charitable giving through estate plans.

Winter CPD: LSM

Register soon for these upcoming CPD programs:

- [Gain the Edge! Negotiation Strategies for Lawyers](#) - This day long seminar, presented by Martin Latz, negotiation expert and author of *Gain the Edge! Negotiating to Get What You Want*, received rave reviews when it was presented in 2009. Attendees will learn to approach negotiations with a strategic mindset, a critical skill that benefits inexperienced and seasoned negotiators alike. The program will be held February 11, 2011 at the Law

Society classroom;

- [Les Mauvais Traitements Envers Les Aînés](#) - French speaking lawyers will be interested in this free program on elder abuse, to be held February 18, 2011 from 1:00 - 4:00 p.m. in the Law Society classroom.

Save the date to register your assistant for the upcoming program **Real Estate for Support Staff** which will be held March 3, 2011. Details to be announced soon.

MBA Meetings

Members of the Real Property section of the Manitoba Bar Association will discuss these topics at their next two scheduled meetings:

- [How title insurance can work for you and your clients \(and limitations thereon\)](#), on February 23, 2011; and
- [Rights and obligations of riparian owners and others wishing to conduct activities on or near bodies of water](#), on March 24, 2011.

Both meetings will be held at Pitblado LLP starting at 5:00 p.m. Those interested in attending should call the numbers set out on the MBA website to confirm.

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